

### **REMARKS**

This responds to the Office Action mailed on June 1, 2006, and the references cited therewith.

Claims 1 and 32 are amended, claims 2 and 31 are canceled, and no claims are added; as a result, claims 1 and 32 are now pending in this application.

Applicants thank the Examiner for pointing out the language regarding Figures 8A and 8B in the Brief Description of the Drawings section of the specification. Applicants have amended the Brief Description of the Drawings to include reference to both 8A and 8B. Support for the amendment can be found in the specification on page 39, lines 3-5; thus, no new matter has been added to the specification.

#### **§101 Rejection of the Claims**

Claims 1, 2, 31 and 32 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter, because the claims do not sufficiently distinguish over proteins and peptides as they exist naturally. Claims 2 and 31 have been cancelled; claims 1 and 32 have been amended to recite “an isolated” protein or variant. Withdrawal of this rejection is respectfully requested.

#### **§112 Rejection of the Claims**

Claims 2 and 31 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claims 2 and 31 have been cancelled, thus making the rejection moot. Withdrawal of this rejection is respectfully requested.

#### **§102 Rejection of the Claims**

Claims 2, 31 and 32 were rejected under 35 U.S.C. § 102(b) as being anticipated by WO 02/04508 A1 (Pub. Date: 1/17/2002, IDS).

Claims 2, 31 and 32 were rejected under 35 U.S.C. § 102(e) as being anticipated by Schweifer et al. (US20020142003A1).

Applicants note that WO 02/04508 A1 and US20020142003A1 have identical text in their respective specifications and claim priority to the same two German patents. Thus, Applicants will address the § 102 rejections for both documents simultaneously.

Applicants are unable to locate “sequence alignment: Exhibit A” and “sequence alignment: Exhibit B,” referred to by the Examiner on page 9, lines 7 and 16. The discussion by the Examiner regarding these exhibits is thus not clearly understood by Applicants. Applicants respectfully request copies of these Exhibits.

The Examiner states (page 9) that because SEQ ID NO: 4 from WO 02/04508 A1 and US20020142003A1 is 99.8% identical to the instant SEQ ID NO: 1, wherein the amino acid 525 is glutamine and the amino acid 827 is asparagine, the teachings anticipate claims 2, 31 and 32.

Applicants submit that Claims 2 and 31 have been cancelled, thus making their rejection moot. Claim 32 is the only remaining claim rejected under § 102(b) and § 102(e). Claim 32 has been amended to proviso out the sequence of SEQ ID NO: 4, disclosed in WO 02/04508 A1 and US20020142003A1. Thus, Applicants respectfully request withdrawal of this rejection.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6939 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JAMES P. QUIGLEY ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6939

Date November 1, 2006

By Albin J. Nelson  
Albin J. Nelson  
Reg. No. 28,650

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18<sup>th</sup> day of November 2006.

CANDIS BUENDING

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Name

Candis Buending  
Signature